

**MINUTES OF THE COURT OF APPEAL
STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT**

October 17, 1997

DIVISION ONE

[illegible]

The judgment is affirmed.

Vogel (Miriam A.), Acting P.J.

We concur: Masterson, J.
Dunn, J. (Assigned)

B108169 People (Not for Publication)
v.
Androsky

The judgment is affirmed.

Vogel (Miriam A.), Acting P.J.

We concur: Masterson, J.
Dunn, J. (Assigned)

B107838 People (Not for Publication)
v.
Galvan

The judgment is affirmed.

Vogel (Miriam A.), J.

We concur: Spencer, P.J.
Masterson, J.

October 17, 1997-Continued

DIVISION ONE (Continued)

B110868 People (Not for Publication)

V.

Joseph H.

The order continuing wardship is affirmed.

Ortega, J.

We concur: Spencer, P.J.

Masterson, J.

B106086 People (Not for Publication)

V.

Dengon & Hom

The judgments are affirmed.

Ortega, Acting P.J.

We concur: Vogel (Miriam A.), J.

Masterson, J.

B105787 Haick (Not for Publication)

V.

Murphy et al.

The order appealed from is affirmed.

Ortega, J.

We concur: Spencer, P.J.

Vogel (Miriam A.), J.

DIVISION ONE (Continued)

B105593 Ralphs Grocery Co. (Certified for Publication)
v.
Workers' Compensation Appeals Board
Moeller, etc.

The decision of the board is annulled. The case is remanded to the board with directions to enter a new order denying the claim.

Ortega, Acting P.J.

We concur: Vogel (Miriam A.), J.
Masterson, J.

DIVISION TWO

B099642 People (Not for Publication)
v.
Scott, et al.

The Court:

The judgment against Daniel Lee Scott is affirmed. The judgment of conviction against Denise Michelle Bale on count 1 is reversed. The judgment of conviction against Denis Michelle Bale on counts 3, 4, 5, and 6 is affirmed. The judgment sentencing Denise Michelle Bale to a total term of 17 years to life is reversed, and the matter is remanded for further proceedings consistent with this opinion.

Fukuto, Acting P.J., Nott, J., Zebrowski, J.

October 17, 1997-Continued

DIVISION TWO (Continued)

B107484 Berg (Not for Publication)
v.
American Bankers Life Assurance, et al.

The summary judgment is reversed as to the insurer defendants, American Bankers Life Assurance Company of Florida, American Bankers Insurance Company of Florida, and American Bankers Insurance Group, and the case is remanded as to the lender defendants, GE Capital Mortgage Services, Inc., GE Capital Insurance Services Agency and GE Capital Mortgage Corporation. The lender defendants are to recover their costs on appeal. Plaintiff is to recover her costs from the insurer defendants.

Zebrowski, J.

I concur: Fukuto, J.
I dissent: Boren, P.J. (Opinion)

B109353 Liberty Mutual Insurance Company (Certified for Publication)
v.
Superior Court, Los Angeles County
(Jensen-Kelly Corporation, et al., r.p.i.)

Let a writ of mandate issue directing the Superior Court to vacate its order of January 13, 1997, denying petitioner Liberty Mutual's motion for summary adjudication of issues as to duty to defend, to issue a new and different order setting that motion for hearing, and to rule upon petitioner Liberty Mutual's motion on the merits. The temporary stay is vacated. Petitioner to recover the costs of this petition.

Zebrowski, J.

We concur: Boren, P.J.
Fukuto, J.

October 17, 1997-Continued

DIVISION TWO (Continued)

B111938 People (Not for Publication)

V.

Superior Court, Los Angeles County
(Mendoza, r.p.i.)

Let a peremptory writ of mandate issue directing the respondent court to vacate its order of March 18, 1997, directing real party to pay restitution to the victim which does not include the amount paid to the victim by the victim's insurance company, and to issue a new and different order specifying that the amount real party must pay to the victim as restitution is the actual cost of repairing the victim's property, to wit, the sum of \$1,349.13.

Zebrowski, J.

We concur: Boren, P.J.
 Fukuto, J.

B114004 Soltz (Not for Publication)

V.

Superior Court, Los Angeles County
(Astro Office Products, Inc., r.p.i.)

The temporary stay is vacated. The writ is denied. Real party to recover the costs of this petition.

Zebrowski, J.

We concur: Boren, P.J.
 Fukuto, J.

DIVISION THREE

B107390 Milomir M. Jelacic (Not for Publication)
v.
Superior Court, Los Angeles County
(William Bruce Feeney, et al., r.p.i.)

The Court:

A Code of Civil Procedure section 396 hearing is not a minitrial or an opportunity for a trial court to make a guess of the possible verdict. The trial court must have a record which *plainly* shows a result within the jurisdiction of the superior court *cannot* be obtained. Irrespective of the fact that plaintiff appears to be exaggerating both his physical injury and his economic losses, the conflict in the declarations of the medical experts and the claimed actual medical expenses of \$21,000 gives rise to the possibility the trial court considered disputed factual issues in its decision to transfer the case to municipal court. In view of the respondent court's misstatement of the standard required for transfer, we grant the petition in part (*Palma v. U.S. Industrial Fasteners, Inc.*, *supra*, 36 Cal.3d at p. 178; *Ng v. Superior Court*, *supra*, 4 Cal.4th at p. 35) and direct the respondent court to vacate the order transferring this action to municipal court and to conduct a new hearing under the standard established in *Walker*, that is, the action *necessarily* involves the determination of questions below the minimum amount in controversy required for jurisdiction in the superior court.

Let a peremptory writ of mandate issue in the first instance, directing the respondent court: (1) to vacate the subject order, and (2) to enter in its place a new order setting a date certain for a hearing to decide, under the standard established by our Supreme Court in *Walker v. Superior Court*, *supra*, 53 Cal.3d 257, whether the amount in controversy is sufficient to maintain the action in the superior court or whether transfer to municipal court is appropriate. No costs are awarded in this proceeding.

Klein, P.J., Croskey, J., Aldrich, J.

October 17, 1997-Continued

DIVISION THREE (Continued)

[illegible]

The Court:

The judgment is affirmed.

Klein, P.J., Croskey, J., Aldrich, J.

B102992 People (Not for Publication)
v.
Flowers

The judgment is affirmed.

Klein, P.J.

We concur: Croskey, J.
 Aldrich, J.

B104854 People (Not for Publication)
v.
Santana

The judgment is corrected to reflect the enhancements pursuant to section 11370.2, subdivision (a), and Penal Code section 667.5, subdivision (b), were stricken rather than stayed and, as so corrected, affirmed.

Klein, P.J.

We concur: Croskey, J.
 Aldrich, J.

October 17, 1997-Continued

DIVISION THREE (Continued)

B104217 People (Not for Publication)
v.
Burnett

The judgment is affirmed.

Klein, P.J.

We concur: Aldrich, J.
Aranda, J. (Assigned)

DIVISION FOUR

Court convened at 9:00 A.M.

Present: Vogel (C.S.), P.J., Epstein, J., Hastings, J., Baron, J., and V. Guzman, Deputy Clerk.

B109987 County of Los Angeles
v.
Jordan

Merits:
Argued by Jeffrey M. Epstein for appellant and by Steven A. Sowders,
deputy district attorney for respondent. Cause submitted.

B108234 People
v.
Virgil S.

Merits:
Argued by Tara K. Brigham for appellant and by Alene M. Games, deputy attorney general for respondent. Cause submitted.

DIVISION FOUR (Continued)

B106091 People
 v.
 Martin

Merits:

Argued by Sharon L. Rhodes for appellant and by Peggy Bradford, deputy attorney general for respondent. Counsel to file supplemental briefing by October 31, 1997. Submission deferred.

B106069 People
 v.
 Board

Merits:

Argued by Sharon L. Rhodes for appellant and by Christina Russotto, deputy attorney general for respondent. Cause submitted.

B109273 Korech
 v.
 Hornwood, et al.

Merits:

Argued by Bonnie L. Bercu for appellant and by Mitchell Monroe for respondents. Cause submitted.

B099446 Centennial Funding Corporation
 v.
 Pendleton, et al.

Merits:

Argued by Jon J. Visel for appellant and by Debra L. Koven for respondents. Cause submitted.

DIVISION FOUR (Continued)

B104396 Crompton
 v.
 Teens Angst Movie Company

Merits:
Argued by Marnie S. Skeen for appellant and by Dennis D. Resh for respondent. Cause submitted.

B105763 Inglewood Police Association, Inc.
 v.
 City of Inglewood, et al.

Merits:
Argued by Alan G. Atlas for appellant and by Richard A. Levine for respondents. Cause submitted.

B106014 Delrose Shoe Company, et al.
 v.
 Pomona Redevelopment Agency, et al.

Merits:
Argued by Richard L. Franck for appellant and by Scott S. Widitor for respondent. Cause submitted.

Justice Hastings leaves the bench.

B099491 Eisenmann
 v.
 Walt Disney Pictures et al.

Merits:
Argued by Robert H. Pourvali for appellant and by John P. Flynn for respondents. Cause submitted.

DIVISION FOUR (Continued)

B097002 KTLA, Inc.
 v.
 Lentz

Merits:

Argued by John W. Powers for appellant and by Marvin E. Krakow for respondent. Cause submitted.

Court in recess.

The Court reconvened at 1:30 P.M.

Present: Vogel (C.S.), P.J., Epstein, J., Hastings, J., Baron, J., and V. Guzman, Deputy Clerk.

B108826 Rogers
 v.
 Rogers

Merits:

Argued by Robin Meadow for appellant, and there being no appearance by respondent pursuant to Rule 17(b) Calif. Rules Court. Cause submitted.

B105893 People
 v.
 Segura

Merits:

Argued by Maxine Weksler for appellant and by Sunnie Lee, deputy attorney general for respondent. Cause submitted.

DIVISION FOUR (Continued)

B105258 L.A. Family Housing Corp.
 v.
 Chipsoft, Inc.

Merits:

Argued by Valerie Waldman for appellant and by Eric J. Emanuel for respondent. Cause submitted.

B108521 Mills
 v.
 Darden, et al.

Merits:

Argued by Charles H. Hack for appellant and by Johanna M. Fontenot, deputy county counsel for respondent. Cause submitted.

B094576 Anro Contruction Company
 v.
 City of Bell Gardens

Merits:

Argued by Dale A. Ortmann for appellant and by Lawrence Halperin for respondent. Cause submitted.

B097361 Yeap
 v.
 Leake

Merits:

Argued by Danilo J. Becerra for appellant and by Carolyn Oill for respondent. Cause submitted.

DIVISION FOUR (Continued)

B097396 Mellone
v.
Mackenzie

Merits:
Argued by Patricia E. Yelle for appellant and by Robert H. Bretz for respondent. Cause submitted.

Justice Baron leaves the bench.

B107943 Rubin
v.
Johnson

Merits:
Argued by Richard P. Kinnan for appellant and by Howard M. Rubin for respondent. Cause submitted.

Each of the following:

B097616 Lucious
B105944 Sigur
B106532 Rodriguez
B106149 Alfonso and Cordova
B109949 Washington
B104212 Araujo
B104421 Forte
B114558 Stacey J.
B102688 Graezer, et al. v. C.A.L. Financial, Inc., et al.

Argument waived, cause submitted.

Court adjourned.

DIVISION FOUR (Continued)

B105553 Halicki
 v.
 McCarroll, et al.

Filed order granting petition for rehearing.

DIVISION FIVE

B109424 Great Western Bank et al. (Certified for Publication)
 v.
 Converse Consultants, Inc. et al.

The judgment is affirmed.

Grignon, J.

We concur: Turner, P.J.
 Godoy Perez, J.

B106191 People (Not for Publication)
 v.
 Phillip Johnson

The judgment is affirmed.

Armstrong, J.

We concur: Turner, P.J.
 Grignon, J.

B110276 People (Not for Publication)
 v.
 Israel C. Barbosa

The judgment is affirmed.

Armstrong, J.

We concur: Turner, P.J.
 Grignon, J.